

REMARKS

Status of Claims

Claims 1, 6-7, 9-10, 15, 17-18, 23-24, 26-27, 32 and 34 are pending, of which claims 1, 7, 10, 15, 18, 24, 27 and 32 are independent.

Claims 1, 6, 7, 10, 15, 18, 23, 24, 27 and 32 have been amended to correct informalities in the claim language and to more clearly define the claimed subject matter. The amendments are fully supported by the original claims. Claims 2-5, 8, 11-14, 16, 19-22, 25, 28-31 and 33 have been cancelled without prejudice or disclaimer of the subject matter thereof. Care has been exercised not to introduce new matter.

Claim Rejection - 35 U.S.C. § 103

Claims 1, 3-6, 10, 12-14, 18, 20-23, 27, and 29-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Keller et al. (USP 4,649,502). Claims 7-9, 15-17, 24-26, and 32-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Keller in view of Takemoto (USP 6,211,973). Applicant respectfully traverses these rejections for at least the following reasons.

Applicant respectfully submits that amended claims 1, 10, 18 and 27 now recite how to determine a representative color and a position thereof automatically, and amended claims 7, 15, 24 and 32 recite the use of the gray control color. Applicant submits that none of the cited documents disclose or suggest these features of the present subject matter.

The Examiner asserts that the claimed representative color determining step to determine a representative color and a position thereof is disclosed at Fig. 1; col. 3, lines 16-21; col. 3, line 67 - col.4, line 8; and col. 4, lines 38-41 of Keller. Applicant respectfully disagrees.

The cited portion does not disclose the claimed representative color determining step (means). Keller appears to disclose dividing the printed products into image elements. However, Keller fails to disclose that the “representative color determining step [is] executed *to classify pixels* in each of said sections corresponding to ink keys” of claims 1 and 10 or the “representative color determining means being arranged *to classify pixels* in each of said sections corresponding to ink keys” of claims 18 and 27.

Further, the Examiner asserts that it would have been obvious to select a representative color with the maximum frequency in the histogram as recited by claim 1, 10, 18 and 27. However, Applicant respectfully notes that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). Applicant respectfully submits that the Examiner fails to provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). In fact, Keller fails to disclose the use of the histogram and there is no motivation or suggestion the use of histogram in Keller. Keller also fails to disclose the feature of automatic selection of a representative color in the first place. Thus, it would not have been obvious to select a representative color with the maximum frequency in the histogram as recited by claim 1, 10, 18 and 27.

Furthermore, the Examiner asserts that it would also have been obvious to select a representative color based on a position having the maximum area. Applicant disagrees. In the present subject matter, the representative color is selected based on a position having the maximum area in order “to avoid the influence of errors caused by the intrinsic noise of the

image pickup unit, and the influence of alignment errors occurring when comparing color data of the image on the reference paper and color data of a printed image” as described in the specification (see, paragraph [0054] of the specification as published). It is clear that Keller fails to disclose these problems and solutions as specified in the present disclosure. Thus, it would not have been obvious to select the position of the representative color to be a position having the maximum area as recited by claims 1, 10, 18 and 27.

As such, Applicant respectfully submits that claims 1, 10, 18 and 27 and all claims dependent thereon are patentable for at least the foregoing reasons.

Regarding amended claims 7, 15, 24 and 32, the Examiner asserts that Takemoto discloses the use of the gray control color of these claims. Applicant respectfully disagrees.

Takemoto is related to a color transforming method for use in transforming color/density data taken by digital cameras or other devices to calorimetric values. More specifically, Takemoto discloses a color transforming method using the device data obtained by imaging with the device a color chart and the correction data obtained by imaging an achromatic (gray) chart. Thus, there is no motivation or suggestion to combine Takemoto with Keller because Takemoto is not analogous art.

Also, as the Examiner concedes, neither of Takemoto nor Keller discloses “only the results of the comparative calculation of the color data in the positions of said gray control color of the image data obtained by reading the image of the print and said gray control color are used when the representative color is devoid of one of said three color components.”

Further, in the present subject matter, even if the representative color is devoid of one of the three color components, the gray control color is used for the color component so as to create

control data for controlling the ink feeding rates of the printing machine. Neither Takemoto nor Keller recognizes or even suggests this effect of the present subject matter by the use of gray control color. Thus, it would not have been obvious to perform the comparative calculation for the gray control color when the representative color of the image is devoid of one of the three color components.

As such, Applicant respectfully submits that claims 7, 15, 24 and 32 and all claims dependent thereon are patentable for at least the foregoing reasons.

Based on the foregoing, Applicant respectfully requests that the Examiner withdraw the rejections of claims 1, 6-7, 9-10, 15, 17-18, 23-24, 26-27, 32 and 34 under 35 U.S.C. § 103(a).

Conclusion

Having fully responded to all matters raised in the Office Action, Applicant submits that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicant's attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Takashi Saito
Limited Recognition L0123

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 TS:MaM
Facsimile: 202.756.8087
Date: May 4, 2009

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as our correspondence address.**